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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1903/2009

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Galina Youbko (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	18 February 2009 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 September 2009 (not issued in document form)
Date of adoption of Views:	17 March 2014
Subject matter:	Right to impart information; denial of authorization to organize a peaceful meeting
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Right to freedom of expression; right of peaceful assembly
Articles of the Covenant:	19; 21
Articles of the Optional Protocol:	2; 5, paragraph 2 (b)

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 1903/2009*

Submitted by:	Galina Youbko (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	18 February 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 March 2014,

Having concluded its consideration of communication No. 1903/2009, submitted to the Human Rights Committee by Ms. Galina Youbko under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author is Ms. Galina Youbko, a Belarusian national born in 1957. She claims to be a victim of a violation, by Belarus, of her rights under articles 19 and 21 of the International Covenant on Civil and Political Rights.[1]

The facts as submitted by the author

2.1 On 19 January 2007, the author, on her own behalf and on behalf of other women whose husbands, sons or other relatives had allegedly been convicted unlawfully, filed an application with the Minsk City Executive Committee requesting to hold a picket from 10 to 13 February 2007, with the purpose of drawing the attention of the public to the need for the judiciary to respect the Constitution and international treaties ratified by the State party when adjudicating civil or criminal cases. In her application, the author specified that 50

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

[1] The Optional Protocol entered into force for the State party on 30 December 1992.

women would participate in the picket, which would take place from 11 a.m. to 6 p.m., and that they would display posters with slogans such as "For Justice", "The President – Guarantor of Constitutional Rights", "We Are Against Bureaucracy in Courts and the Prosecutor's Office", and "Why Are Innocent People Convicted and Real Murderers Remain Free?", among others.

2.2 The application was reviewed by the Deputy Chair of the Minsk City Executive Committee, who, on 2 February 2007, refused to allow the picket to be held, as its purpose was considered to be an attempt to question court decisions, and, therefore, to influence court rulings in specific civil and criminal cases, in violation of article 110 of the Constitution.

2.3 On 27 February 2007, the author appealed this refusal to the Moscow District Court of Minsk, stressing that the planned picket concerned civil and criminal cases that had already been examined by all court instances, including under the supervisory review proceedings, and had thus become final. On 3 April 2007, the District Court rejected her appeal, finding the Executive Committee's justification for the refusal to be grounded and lawful.

2.4 On an unspecified date, the author appealed to Minsk City Court against the decision of the Moscow District Court, noting that the relevant national legislation prohibited the influencing of courts during the process of adjudication and deciding on cases, and reiterating that the picket would have concerned cases that had already been examined by all court instances, including under the supervisory review proceedings. On 10 May 2007, Minsk City Court upheld the lower court's decision. On an unspecified date, the author appealed against the decision of 10 May 2007 to the Chair of Minsk City Court through the supervisory review proceedings but her request for a supervisory review was rejected on 7 July 2007. Subsequently, she filed two additional applications for a supervisory review with the Chair of the Supreme Court, without success. On an unspecified date, she also tried, unsuccessfully, to complain to the Constitutional Court.

The complaint

3. The author claims that by refusing her request to hold a picket, together with others, which was aimed at expressing opinions, the authorities violated her rights to freedom of expression and to peaceful assembly as guaranteed under articles 19 and 21 of the Covenant.

State party's observations on admissibility

4.1 On 23 November 2009, the State party challenged the admissibility of the communication, arguing that the author had failed to exhaust all available domestic remedies. It recalls the facts of the case concerning the author's application to hold a picket, and its subsequent refusal by the Minsk City Executive Committee.

4.2 The State party notes that the author unsuccessfully appealed the refusal through appellate, cassation and supervisory review proceedings. In this connection, it points out that the appeal through supervisory review proceedings was submitted to Minsk City Court and to the Supreme Court. However, the author has not requested the Prosecutor General to initiate supervisory review proceedings concerning a decision that has entered into force, as provided for under article 438, paragraph 5, of the Civil Procedure Code.

Author's comments on the State party's observations on the admissibility

5. On 28 January 2010, the author listed all of the complaints and appeals that she had made in relation to her request to hold a picket in February 2007, as well as the replies of the different authorities thereto. She emphasizes that she complained to all possible court

instances, including to the Supreme Court, but that all her appeals were rejected. According to her, in the circumstances, complaining to the Prosecutor General's Office via the supervisory review proceedings would have been ineffective, as under article 439 of the Civil Procedure Code, a prosecutor's protest motion to have a case examined via the supervisory review proceedings would have been sent for consideration to a court authorized to decide on whether to satisfy or reject the request. Therefore, in addition to not being an effective remedy, complaining to the Prosecutor's Office would have only resulted in further delaying the proceedings in this case.

State party's further observations

6. In a note verbale dated 25 January 2012, the State party affirmed that by adhering to the Optional Protocol to the Covenant, it had recognized the Committee's competence under article 1 thereof, to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any of the rights set forth in the Covenant. This recognition of competence is made in conjunction with other provisions of the Optional Protocol, including those setting up criteria regarding the petitioners and admissibility, particularly articles 2 and 5, paragraph 2. States parties have no obligation under the Optional Protocol to recognize the Committee's rules of procedure and its interpretation of the Optional Protocol's provisions. According to the State party, this means that in the context of the communication procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol, and that references to the Committee's long-standing practice, methods of work and case law "are not subject to the Optional Protocol". Furthermore, it submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without observations on the admissibility or on the merits. The State party maintains that decisions taken by the Committee on such "declined communications" will be considered by its authorities as "invalid".

Issues and proceedings before the Committee

The State party's failure to cooperate

7.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it is registered in violation of the provisions of the Optional Protocol; that it has no obligations regarding recognition of the Committee's rules of procedure and regarding the Committee's interpretation of the Optional Protocol's provisions; and that if a decision is taken by the Committee on the present communication, it will be considered "invalid" by the State party's authorities.

7.2 The Committee recalls that under article 39, paragraph 2, of the Covenant, it is empowered to establish its own rules of procedure, which the States parties have agreed to recognize. Moreover, it observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1). Implicit in a State's adherence to the Optional Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (art. 5, paras. 1 and 4). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the

expression of its Views.[2] It is for the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication shall be registered and by declaring beforehand that it will not accept the determination of the Committee on the admissibility or the merits of such a communication, the State party violates its obligations under article 1 of the Optional Protocol.[3]

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol on the grounds that the author has not requested the Prosecutor General's Office to have her case considered under the supervisory review proceedings. However, the Committee notes that the State party has not shown whether the supervisory review proceedings have been successfully applied in cases concerning the right to freedom of expression and the right to peaceful assembly. The Committee also notes the author's claim that in the circumstances of the case, the supervisory review proceedings would have been ineffective and would have resulted in delaying the case, given that under article 439 of the Civil Procedure Code, the prosecutor's protest motion would have been sent for consideration by the same court that had already examined her complaint. The Committee recalls its jurisprudence, according to which the State party's supervisory review proceedings, which allow for the review of court decisions that have taken effect, do not constitute a remedy that has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.[4] Accordingly, the Committee considers that it is not precluded by the requirements of article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication.

8.4 The Committee considers that the author's claims under article 19 and article 21 of the Covenant are sufficiently substantiated for the purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

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[2] See, inter alia, communication No. 869/1999, *Piandiong et al.* v. *the Philippines*, Views adopted on 19 October 2000, para. 5.1.

[3] See, for example, communication No. 1226/2003, *Korneenko* v. *Belarus*, Views adopted on 20 July 2012, paras. 8.1 and 8.2; and communication No. 1948/2010, *Turchenyak et al.* v. *Belarus*, Views adopted on 24 July 2013, paras. 5.1. and 5.2.

[4] See, for example, communication No. 1785/2008, *Oleshkevich* v. *Belarus*, Views adopted on 18 March 2013, para. 7.3; communication No. 1784/2008, *Schumilin* v. *Belarus*, Views adopted on 23 July 2012, para. 8.3; communication No. 1814/2008, *P.L.* v. *Belarus*, decision of inadmissibility, 26 July 2011, para. 6.2.; and communication No. 1839/2008, *Komarovsky* v. *Belarus*, Views adopted on 25 October 2013, para. 8.3.

9.2 The first issue before the Committee is whether the prohibition on holding a picket, in February 2007, to display posters with specific slogans calling for justice, with the purpose of drawing the attention of the public to the need for the judiciary to comply with the Constitution and the provisions of international treaties ratified by the State party when adjudicating civil and criminal cases, constitutes a violation of the author's rights under article 19, paragraph 2, and article 21, of the Covenant.

9.3 The Committee recalls that article 19, paragraph 2, of the Covenant requires States parties to guarantee the right to freedom of expression, including the freedom to impart information. The Committee refers to its general comment No. 34 (2011) on freedoms of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone for every free and democratic society.[5] Any restrictions on the exercise of these freedoms must conform to strict tests of necessity and proportionality.[6] Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[7]

9.4 The Committee notes that the refusal to permit the holding of a picket aimed at displaying posters to attract public attention to a specific topic, in this case the work of the judiciary, amounted to a restriction on the exercise of the author's right to impart information and on the exercise of her right to freedom of assembly. Therefore, the issue before it is to verify whether the restrictions imposed on the author's rights in the present communication are justified under any of the criteria as set out in article 19, paragraph 3, and in the second sentence of article 21, of the Covenant.

9.5 The Committee recalls that article 19, paragraph 3, of the Covenant allows certain restrictions, but only as provided by law and necessary (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (ordre public), or of public health or morals. It also recalls that the second sentence of article 21 of the Covenant requires that no restrictions be placed on the exercise of the right to peaceful assembly other than those imposed (a) in conformity with the law and (b) which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. The Committee notes that if the State imposes a restriction, it is for the State party to demonstrate that the restriction on the rights under article 19, paragraph 2, and article 21, of the Covenant was necessary in the case in question, and that even if, in principle, States parties may introduce a system aimed at reconciling an individual's freedom to impart information and to participate in a peaceful assembly with the general interest of maintaining public order in a certain area, the system must not operate in a way that is incompatible with the object and purpose of articles 19 and 21 of the Covenant.[8]

9.6 The Committee notes that the State party has submitted no observations on the merits of the present communication. However, the Committee points out that the author was refused permission by the State party's local authorities to display posters calling for

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[5] See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 40*, vol. I A/66/40 (Vol. I)), annex V.

[6] Ibid., para. 22.

[7] Ibid., para. 22. See also, for example, communication No. 1948/2010, *Turchenyak et al.* v. *Belarus*, Views adopted on 24 July 2013, para. 7.7.

[8] See, for example, communication No. 1948/2010, *Turchenyak et al.* v. *Belarus*, Views adopted on 24 July 2013, para. 7.8.

justice during a picket that was aimed at drawing public attention to the need for the judiciary to respect both the Constitution and international treaties ratified by the State party when adjudicating civil and criminal cases, by restricting her right to impart her opinions regarding the administration of justice in the State party and to participate in a peaceful assembly, together with others. It notes that the authorities' refusal was based on the grounds that the purpose of the picket was seen by the authorities as an attempt to question court decisions, and, therefore, to influence court rulings in specific civil and criminal cases in violation of article 110 of the Constitution. The Committee notes, however, that the local authorities have not explained how, in practice, criticism of a general nature regarding the administration of justice would jeopardize the court rulings at issue, for the purposes of one of the legitimate aims set out in article 19, paragraph 3, or in the second sentence of article 21, of the Covenant.

9.7 In this regard, the Committee notes that the State party has failed to explain, for the purposes of article 19, paragraph 3, and the second sentence of article 21, of the Covenant, why it was necessary to restrict the author's right to express opinions by refusing her permission to hold the picket at issue – for respect of the rights or reputations of others, for the protection of national security or of public order (ordre public), or of public health or morals.

9.8 In the circumstances, and in the absence of any information in this regard from the State party to justify the restriction for the purposes of article 19, paragraph 3, and the second sentence of article 21, the Committee concludes that the author's rights under article 19, paragraph 2, and article 21, of the Covenant have been violated.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of the author's rights under article 19, paragraph 2, and article 21, of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]